



Docket No. 3951-4001

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Jonathan Ellenberg, et. al.

Group Art Unit: 3624

Serial No.: 09/624,439

Examiner: FELTEN, Daniel S

Filed: July 24, 2000

For: SYSTEM AND METHOD FOR CONDUCTING A CUSTOMER AFFINITY
PROGRAM AUCTION

DECLARATION UNDER 37 C.F.R. § 1.131

Mail Stop
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Sir:

This Declaration Under 37 C.F.R. § 1.131 is submitted in the above-identified application.

Jonathan Ellenberg, being duly sworn, deposes and says:

1. That I am a co-inventor of the above-identified patent application.
2. That my records indicate that the invention of the above-identified patent application was conceived prior to June 23, 1999, as evidenced by the photocopies of the documents attached hereto as Exhibits A and B.
3. That every date on Exhibits A and B was earlier than June 23, 1999.

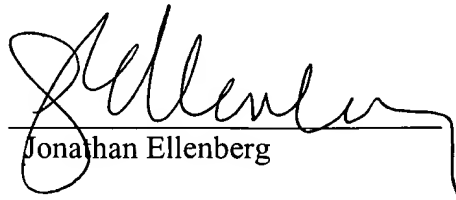
4. That Exhibits A and B disclose the concept of a system and method for conducting a customer affinity program auction as claimed in the above-identified patent application.

5. I began working on implementing the system and method for conducting a customer affinity program auction before June 23, 1999. The system and method was ultimately reduced to practice.

6. That at all times from when I began working on implementing the system and method for conducting a customer affinity program auction, prior to June 23, 1999, to the date when the system and method for conducting a customer affinity program auction was reduced to practice, I worked diligently on the implementation of the system and method for conducting a customer affinity program auction.

7. I hereby further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application of any patent issued thereon.

Date: 6/15/04


Jonathan Ellenberg

Please respond to GGazzia@NJAOST.ML.com

To: Rhodes Rumsey/Atlanta/IBM@IBMUS

CC:

Subject: Merrill Lynch Auctions

Dusty,

I figured I needed to give you some additional information regarding auctions so that we can receive a proposal targeted to Merrill Lynch. We are currently speaking with uBid in reference to their auction engine. This is something Frank needs me to pursue ASAP.

- * Merrill Lynch is looking to create an auction site using the Signature Reward Points - It will provide Visa Signature members the capability to redeem their Signature Reward Points for products offered for auction.

- * If the Signature Rewards Auction is successful, Merrill Lynch would add a Regular Auction site.

IBM/OpenSite Technologies needs to:

- * Modify its program to enable the use of Signature Reward Points
- * Work with Merrill Lynch to come up with the initial architectural design for the site
- * Implement the initial site
- * Help Merrill Lynch set up and manage online auctions
- * Provide training to Merrill Lynch on the online auction system
- * Provide technical support during the engagement

Requirements:

IBM/OpenSite will license its Online Auction software to Merrill Lynch for use in the Signature Reward program. Winning bidders will be referred to Merrill Lynch's 1-800 number to finalize their transaction for the items purchased at auction. Merrill Lynch will be the party offering the inventory in the auction.

IBM/OpenSite will supply the resources for:

- * Systems development, operation and maintenance
- * Copies of the software required to operate the system
- * Modification and support to change UI to specifications supplied by Merrill Lynch
- * Merrill Lynch will determine the number of inventory items to be put

up for bid in any single auction and the minimum bid for such inventory in the auction.

Merrill Lynch will be responsible for and bear the costs of:

- * Merchandising, including any governmental approvals, licenses or permits required in connection therewith.
- * All content for the Merrill Lynch Signature Reward auction site, including: relevant information on the inventory offered; all disclosures and disclaimers required by law to offer the inventory (including any required statements that the inventory is not being offered to residents of particular jurisdictions); order fulfillment, including all arrangements for winning bidders to secure their inventory won at auction; and customer service.

Development Specifications

Merrill Lynch will provide the specifications for the systems development effort, including interface specifications. If IBM/OpenSite is unable to supply the resources to meet specified timelines, under IBM/OpenSite's direction, Merrill Lynch will provide the resources required to complete the project.

IBM/OpenSite Fees?

- * Auction engine license fee
- * Hourly rate for resources needed

Target Date for Pilot Launch

We would like to have the Merrill Lynch Signature Reward auction site operational within 90 days following the signing of a definitive agreement.

IBM/OpenSite and Merrill Lynch will determine the length of time needed to successfully carry out a pilot of the auction site. Once the pilot is complete a decision will be made on whether Merrill Lynch should have a permanent auction site.

The Merrill Lynch/Auction Partnership

Business Strategy:

Merrill Lynch is interested in partnering with an auction management firm in order to promote Merrill Lynch products and a more active use of the MLOL site. Three options for partnership would be possible:

1. Merrill Lynch would partner with an on-line auction Internet site that would run auctions on behalf of Merrill Lynch.
2. Merrill Lynch would purchase auction software and incorporate the software into ML OnLine, taking responsibility for running auctions.
3. Merrill Lynch would purchase auction software that would run at an alternate site and contract with an auction management firm to run the auction offsite.

Although Merrill Lynch prefers the first option, the other two would be considered viable under limited circumstances.

Audience for the Auctions:

Since Merrill Lynch would like to sponsor different types of auctions for various purposes, a method for targeting the auction audience is necessary. In any case, however, these auctions would be offered to Merrill Lynch clients exclusively. However, under some conditions the target audience would be expanded or contracted based on the purpose of the auction.

We need the capability to keep our client's anonymous to other users of the auction site.

Types of Auctions:

The full range of auctions would be needed. This means that for each auction, Merrill Lynch would want the ability to determine which type of auction to hold from the following well-known auction types:

- Traditional
- Traditional with Agent
- Descending or Dutch
- Wall Street

Silent
Straight Sale
Fire Sale

Settlement:

The auction manager would be responsible for determining the winner of the auction and communicating this information to Merrill Lynch. Upon that communication, Merrill Lynch would be responsible for the actual settlement of the purchase. This would be done using the standard methods of settlement that take place for auctions today. The only potential deviation from this is the possibility of settling in Merrill Lynch dollars, CMA Visa Signature Rewards points, or other pseudo-money forms of payment to be determined.

Scheduling and Notification of Auctions:

It would be expected that the auction management system would have the facility to schedule and notify the different target audiences of when a particular auction is taking place and what's being put up for auction.

Product Selection:

Products, services or events being offered for auction can come from Merrill Lynch, a Merrill Lynch e-commerce partner or from the auction management firm.

PROPOSED FUNCTIONALITY

Rules	<ol style="list-style-type: none"> 1. Each auction has a pre-determined start and end date based on the seller discretion. 2. Auctions normally last 1 – 7 days. 3. Auction bidding can be done 24 hours a day, 7 days a week. 4. Prices are final and it is up to the seller and winning bidder to complete the sale. 5. All bids are done online with registered participants. 6. Sellers cannot bid in their own auction.
Bidding	<ol style="list-style-type: none"> 1. Traditional - This is the standard bidding process, where a product goes up for auction at a starting price. 2. Traditional with Agent - These are traditional auctions with the added feature that you can use an intelligent Agent to place bids on your behalf. 3. Descending or Dutch - Products start at a set price, and at regular time intervals, the price decreases by a set amount. 4. Wall Street - Like the stock market, the selling price of a product in this bidding process is based on demand. 5. Silent - Here, unlike the other bidding methods, you have no clue what your competitors are offering for a particular product. 6. Straight Sale - Products are offered at a set price, and sell on a first-come, first-served basis, until the supply is exhausted. 7. FireSale - This auction is very similar to a straight sale. However, every time someone bids, the sale price moves slightly higher by the amount posted under Price Increase Per Bid.
Selling	<ol style="list-style-type: none"> 1. Seller fee, when applicable, will be waived to encourage usage of the site.
Email	<ol style="list-style-type: none"> 1. Confirm of bid 2. Daily status of involved auctions 3. Outbid notification when maximum bid is reached 4. End of auction notification 5. Winning bid notification to seller and buyer
Payment/Credit	<ol style="list-style-type: none"> 1. Can be facilitated between ML accounts. 2. CMA Visa Signature, WCMA or EMA Premium Visa card purchases would be eligible for additional Signature Rewards points. 3. Purchases made with Signature Rewards points would be deducted from client's total balance.